

## **Pension Benefit Guaranty Corporation**

## **§ 4281.1**

### **§ 4245.7 PBGC address.**

All notices required to be filed with the PBGC under this part shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(Approved by the Office of Management and Budget under control number 1212-0033)

4281.44 Contents of notices of insolvency and annual updates.

4281.45 Notices of insolvency benefit level.

4281.46 Contents of notices of insolvency benefit level.

4281.47 Application for financial assistance.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

SOURCE: 61 FR 34118, July 1, 1996, unless otherwise noted.

## **PART 4261—FINANCIAL ASSISTANCE TO MULTIEMPLOYER PLANS**

SOURCE: 61 FR 34118, July 1, 1996, unless otherwise noted.

### **§ 4261.1 Cross-reference.**

See § 4281.47 for procedures for applying to the PBGC for financial assistance under section 4261 of ERISA.

## **PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL**

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## **Subpart A—General Provisions**

### **§ 4281.1 Purpose and scope.**

(a) *General*—(1) *Purpose*. When a multiemployer plan terminates by mass withdrawal under section 4041A(a)(2) of ERISA, the plan's assets and benefits must be valued annually under section 4281(b) of ERISA, and plan benefits may have to be reduced or suspended to the extent provided in section 4281 (c) or (d). This part implements the provisions of section 4281 and provides rules for applying for financial assistance from the PBGC under section 4261 of ERISA. The plan valuation rules in this part also apply to the determination of reallocation liability under section 4219(c)(1)(D) of ERISA and subpart B of part 4219 of this chapter for multiemployer plans that undergo mass withdrawal (with or without termination).

(2) *Scope*. This part applies to multiemployer plans covered by title IV of ERISA that have terminated by mass withdrawal under section 4041A(a)(2) of ERISA (including plans created by partition pursuant to section 4233 of ERISA). Subpart B of this part also applies to covered multiemployer plans that have undergone mass withdrawal without terminating.

(b) *Subpart B*. Subpart B establishes rules for determining the value of multiemployer plan benefits and assets, including outstanding claims for withdrawal liability, for plans required to perform annual valuations under section 4281(b) of ERISA or allocate unfunded vested benefits under section 4219(c)(1)(D) of ERISA.

(c) *Subpart C*. Subpart C sets forth procedures under which the plan sponsor of a terminated plan shall amend the plan to reduce benefits subject to reduction in accordance with section 4281(c) of ERISA and § 4041A.24(b) of

this chapter. Subpart C applies to a plan for which the annual valuation required by § 4041A.24(a) indicates that the value of nonforfeitable benefits under the plan exceeds the value of the plan's assets (including claims for withdrawal liability) if, at the end of the plan year for which that valuation was done, the plan provided any benefits subject to reduction. Benefit reductions required to be made under subpart C shall not apply to accrued benefits under plans or plan amendments adopted on or before March 26, 1980, or under collective bargaining agreements entered into on or before March 26, 1980.

(d) *Subpart D.* Subpart D sets forth the procedures under which the plan sponsor of an insolvent plan must suspend benefit payments and issue insolvency notices in accordance with section 4281(d) of ERISA and § 4041A.25 (c) and (d) of this chapter. Subpart D applies to a plan that has been amended under section 4281(c) of ERISA and subpart C of this part to eliminate all benefits subject to reduction and to a plan that provided no benefits subject to reduction as of the date on which the plan terminated.

**§ 4281.2 Definitions.**

The following terms are defined in § 4001.2 of this chapter: annuity, employer, ERISA, fair market value, IRS, insurer, irrevocable commitment, mass withdrawal, multiemployer plan, nonforfeitable benefit, normal retirement age, PBGC, person, plan, plan administrator, and plan year.

In addition, for purposes of this part:

*Available resources* means, for a plan year, available resources as described in section 4245(b)(3) of ERISA.

*Benefits subject to reduction* means those benefits accrued under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreements entered into after March 26, 1980, that are not eligible for the PBGC's guarantee under section 4022A(b) of ERISA.

*Financial assistance* means financial assistance from the PBGC under section 4261 of ERISA.

*Insolvency benefit level* means the greater of the resource benefit level or the benefit level guaranteed by the

PBGC for each participant and beneficiary in pay status.

*Insolvency year* means insolvency year as described in section 4245(b)(4) of ERISA.

*Insolvent* means that a plan is unable to pay benefits when due during the plan year. A plan terminated by mass withdrawal is not insolvent unless it has been amended to eliminate all benefits that are subject to reduction under section 4281(c), or, in the absence of an amendment, no benefits under the plan are subject to reduction under section 4281(c) of ERISA.

*Pro rata* means that the required benefit reduction or payment shall be allocated among affected participants in the same proportion that each such participant's nonforfeitable benefits under the plan bear to all nonforfeitable benefits of those participants under the plan.

*Reasonably expected to enter pay status* means, with respect to plan participants and beneficiaries, persons (other than those in pay status) who, according to plan records, are disabled, have applied for benefits, or have reached or will reach during the applicable period the normal retirement age under the plan, and any others whom it is reasonable for the plan sponsor to expect to enter pay status during the applicable period.

*Resource benefit level* means resource benefit level as described in section 4245(b)(2) of ERISA.

*Valuation date* means the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

**§ 4281.3 Submission of documents.**

(a) *Filing date.* Any notice, document or information required to be filed with the PBGC under this part shall be considered filed on the date of the United States postmark stamped on the cover in which the document or information is mailed, provided that the postmark was made by the United States Postal Service and the document was mailed postage prepaid, properly packaged and addressed to the PBGC. If these conditions are not met, the document shall be considered filed on the date on which it was received by the PBGC.

(b) *Address.* All notices, documents and information required to be filed with the PBGC under this part shall be addressed to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

**§ 4281.4 Collection of information.**

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under control number 1212-0032.

**Subpart B—Valuation of Plan Benefits and Plan Assets**

**§ 4281.11 Valuation dates.**

(a) *Annual valuations of mass-withdrawal-terminated plans.* The valuation dates for the annual valuation required under section 4281(b) of ERISA shall be the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

(b) *Valuations related to mass withdrawal reallocation liability.* The valuation date for determining the value of unfunded vested benefits (for purposes of allocation) under section 4219(c)(1)(D) of ERISA shall be—

(1) If the plan terminates by mass withdrawal, the last day of the plan year in which the plan terminates; or

(2) If substantially all the employers withdraw from the plan pursuant to an agreement or arrangement to withdraw from the plan, the last day of the plan year as of which substantially all employers have withdrawn from the plan pursuant to the agreement or arrangement.

**§ 4281.12 Benefits to be valued.**

(a) *Form of benefit.* The plan sponsor shall determine the form of each benefit to be valued, without regard to the form of benefit valued in any prior year, in accordance with the following rules:

(1) If a benefit is in pay status as of the valuation date, the plan sponsor shall value the form of benefit being paid.

(2) If a benefit is not in pay status as of the valuation date but a valid election with respect to the form of benefit has been made on or before the valuation

date, the plan sponsor shall value the form of benefit so elected.

(3) If a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit that, under the terms of the plan or applicable law, is payable in the absence of a valid election.

(b) *Timing of benefit.* The plan sponsor shall value benefits whose starting date is subject to election—

(1) By assuming that the starting date of each benefit is the earliest date, not preceding the valuation date, that could be elected; or

(2) By using any other assumption that the plan sponsor demonstrates to the satisfaction of the PBGC is more reasonable under the circumstances.

**§ 4281.13 Benefit valuation methods—in general.**

Except as otherwise provided in § 4281.16 (regarding plans that are closing out), the plan sponsor shall value benefits as of the valuation date by—

(a) Using the interest assumptions described in Table I of appendix B to part 4044 of this chapter;

(b) Using the mortality assumptions described in § 4281.14;

(c) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(d) Applying valuation formulas that accord with generally accepted actuarial principles and practices; and

(e) Adjusting the values to reflect the loading for expenses in accordance with appendix C to part 4044 of this chapter (substituting the term “benefits” for the term “benefit liabilities (as defined in 29 U.S.C. § 1301(a)(16))”).

[61 FR 34118, July 1, 1996, as amended at 63 FR 38307, July 16, 1998]

**§ 4281.14 Mortality assumptions.**

(a) *General rule.* Subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), and (e) of this section to value benefits under § 4281.13.

(b) *Certain death benefits.* If an annuity for one person is in pay status on

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the valuation date, and if the payment of a death benefit after the valuation date to another person, who need not be identifiable on the valuation date, depends in whole or in part on the death of the pay status annuitant, then the plan administrator shall value the death benefit using—

(1) The mortality rates that are applicable to the annuity in pay status under this section to represent the mortality of the pay status annuitant; and

(2) The mortality rates applicable to annuities not in pay status and to deferred benefits other than annuities, under paragraph (c) of this section, to represent the mortality of the death beneficiary.

(c) *Mortality rates for healthy lives.* The mortality rates applicable to annuities in pay status on the valuation date that are not being received as disability benefits, to annuities not in pay status on the valuation date, and to deferred benefits other than annuities, are,—

(1) For male participants, the rates in Table 1 of appendix A to part 4044 of this chapter, and

(2) For female participants, the rates in Table 1 of appendix A to part 4044 of this chapter, set back 6 years.

(d) *Mortality rates for disabled lives (other than Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which neither eligibility for, nor receipt of, Social Security disability benefits is a prerequisite, are,—

(1) For male participants, the rates in Table 1 of appendix A to part 4044 of this chapter, set forward 3 years, and

(2) For female participants, the rates in Table 1 of appendix A to part 4044 of this chapter, set back 3 years.

(e) *Mortality rates for disabled lives (Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which either eligibility for, or receipt of, Social Security disability benefits is a prerequisite, are the rates

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in Tables 2–M and 2–F of appendix A to part 4044 of this chapter.

[61 FR 34118, July 1, 1996, as amended at 63 FR 38307, July 16, 1998]

## § 4281.15 [Reserved]

## § 4281.16 Benefit valuation methods—plans closing out.

(a) *Applicability.* For purposes of the annual valuation required by section 4281(b) of ERISA, the plan sponsor shall value the plan's benefits in accordance with paragraph (b) of this section if,—

(1) *Plans closed out before valuation.* Before the time when the valuation is performed, the plan has satisfied in full all liabilities for payment of nonforfeitable benefits, in a manner consistent with the terms of the plan and applicable law, by the purchase of one or more nonparticipating irrevocable commitments from one or more insurers, with respect to all benefits payable as annuities, and by the payment of single-sum cash distributions, with respect to benefits not payable as annuities; or

(2) *Plans to be closed out after valuation.* As of the time when the valuation is performed, the plan sponsor reasonably expects that the plan will close out before the next annual valuation date and the plan sponsor has a currently exercisable bid or bids to provide the irrevocable commitment(s) described in paragraph (a)(1) of this section and the total cost of the irrevocable commitment(s) under the bid, plus the total amount of the single-sum cash distributions described in paragraph (a)(1), does not exceed the value of the plan's assets, exclusive of outstanding claims for withdrawal liability, as determined under this subpart.

(b) *Valuation rule.* The present value of nonforfeitable benefits under this section is the total amount of single-sum cash distributions made or to be made plus the cost of the irrevocable commitment(s) purchased or to be purchased in order to satisfy in full all liabilities of the plan for nonforfeitable benefits.

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### § 4281.17 Asset valuation methods—in general.

(a) *General rule.* The plan sponsor shall value plan assets as of the valuation date, using the valuation methods prescribed by this section and § 4281.18 (regarding outstanding claims for withdrawal liability), and deducting administrative liabilities in accordance with paragraph (c) of this section.

(b) *Assets other than withdrawal liability claims.* The plan sponsor shall value any plan asset (other than an outstanding claim for withdrawal liability) by such method or methods as the plan sponsor reasonably believes most accurately determine fair market value.

(c) *Adjustment for administrative liabilities.* In determining the total value of plan assets, the plan sponsor shall subtract all plan liabilities, other than liabilities to pay benefits. For this purpose, any obligation to repay financial assistance received from the PBGC under section 4261 of ERISA is a plan liability other than a liability to pay benefits. The obligation to repay financial assistance shall be valued by determining the value of the scheduled payments in the same manner as prescribed in § 4281.18(a) for valuing claims for withdrawal liability.

### § 4281.18 Outstanding claims for withdrawal liability.

(a) *Value of claim.* The plan sponsor shall value an outstanding claim for withdrawal liability owed by an employer described in paragraph (b) of this section in accordance with paragraphs (a)(1) and (a)(2) of this section:

(1) If the schedule of withdrawal liability payments provides for one or more series of equal payments, the plan sponsor shall value each series of payments as an annuity certain in accordance with the provisions of § 4281.13.

(2) If the schedule of withdrawal liability payments provides for one or more payments that are not part of a series of equal payments as described in paragraph (a)(1) of this section, the plan sponsor shall value each such unequal payment as a lump-sum payment in accordance with the provisions of § 4281.13.

(b) *Employers neither liquidated nor in insolvency proceedings.* The plan sponsor shall value an outstanding claim for withdrawal liability under paragraph (a) of this section if, as of the valuation date—

(1) The employer has not been completely liquidated or dissolved; and

(2) The employer is not the subject of any case or proceeding under title 11, United States Code, or any case or proceeding under similar provisions of state insolvency laws; except that the claim for withdrawal liability of an employer that is the subject of a proceeding described in this paragraph (b)(2) shall be valued under paragraph (a) of this section if the plan sponsor determines that the employer is reasonably expected to be able to pay its withdrawal liability in full and on time.

(c) *Claims against other employers.* The plan sponsor shall value at zero any outstanding claim for withdrawal liability owed by an employer that does not meet the conditions set forth in paragraph (b) of this section.

## Subpart C—Benefit Reductions

### § 4281.31 Plan amendment.

The plan sponsor of a plan described in § 4281.31 shall amend the plan to eliminate those benefits subject to reduction in excess of the value of benefits that can be provided by plan assets. Such reductions shall be effected by a pro rata reduction of all benefits subject to reduction or by elimination or pro rata reduction of any category of benefit. Benefit reductions required by this section shall apply only prospectively. An amendment required under this section shall take effect no later than six months after the end of the plan year for which it is determined that the value of nonforfeitable benefits exceeds the value of the plan's assets.

### § 4281.32 Notices of benefit reductions.

(a) *Requirement of notices.* A plan sponsor of a multiemployer plan under which a plan amendment reducing benefits is adopted pursuant to section 4281(c) of ERISA shall so notify the PBGC and plan participants and beneficiaries whose benefits are reduced by

the amendment. The notices shall be delivered in the manner and within the time prescribed, and shall contain the information described, in this section. The notice required in this section shall be filed in lieu of the notice described in section 4244A(b)(2) of ERISA.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of benefit reduction no later than the earlier of—

(1) 45 days after the amendment reducing benefits is adopted; or

(2) The date of the first reduced benefit payment.

(c) *Method of delivery.* The notices of benefit reductions shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries who are in pay status when the notice is required to be delivered or who are reasonably expected to enter pay status before the end of the plan year after the plan year in which the amendment is adopted. The notice to other participants and beneficiaries whose benefit is reduced by the amendment shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to the participant's beneficiary or beneficiaries.

(d) *Contents of notice to the PBGC.* A notice of benefit reduction required to be filed with the PBGC pursuant to paragraph (a) of this section shall contain the following information:

(1) The name of the plan.

(2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Number (PN) assigned by the plan sponsor to the plan, and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice shall so state.

(4) The case number assigned by the PBGC to the filing of the plan's notice

of termination pursuant to part 4041A, subpart B, of this chapter.

(5) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(6) A certification, signed by the plan sponsor or its duly authorized representative, that notice of the benefit reductions has been given to all participants and beneficiaries whose benefits are reduced by the plan amendment, in accordance with the requirements of this section.

(e) *Contents of notice to participants and beneficiaries.* A notice of benefit reductions required under paragraph (a) of this section to be given to plan participants and beneficiaries whose benefits are reduced by the amendment shall contain the following information:

(1) The name of the plan.

(2) A statement that a plan amendment reducing benefits has been adopted, listing the date of adoption and the effective date of the amendment.

(3) A summary of the amendment, including a description of the effect of the amendment on the benefits to which it applies.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

#### § 4281.33 Restoration of benefits.

(a) *General.* The plan sponsor of a plan that has been amended to reduce benefits under this subpart shall amend the plan to restore those benefits before adopting any amendment increasing benefits under the plan. A plan is not required to make retroactive benefit payments with respect to any benefit that was reduced and subsequently restored in accordance with this section.

(b) *Notice to the PBGC.* The plan sponsor shall notify the PBGC in writing of any restoration under this section. The notice shall include the information specified in § 4281.32 (d)(1) through (d)(4); a statement that a plan amendment restoring benefits has been adopted, the date of adoption, and the effective date of the amendment; and a certification, signed by the plan sponsor

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or its duly authorized representative, that the amendment has been adopted in accordance with this section.

### Subpart D—Benefit Suspensions

#### § 4281.41 Benefit suspensions.

If the plan sponsor determines that the plan is or is expected to be insolvent for a plan year, the plan sponsor shall suspend benefits to the extent necessary to reduce the benefits to the greater of the resource benefit level or the level of guaranteed benefits.

#### § 4281.42 Retroactive payments.

(a) *Erroneous resource benefit level.* If, by the end of a year in which benefits were suspended under § 4281.41, the plan sponsor determines in writing that the plan's available resources in that year could have supported benefit payments above the resource benefit level determined for that year, the plan sponsor may distribute the excess resources to each affected participant and beneficiary who received benefit payments that year on a pro rata basis. The amount distributed to each participant under this paragraph may not exceed the amount that, when added to benefit payments already made, brings the total benefit for the plan year up to the total benefit provided under the plan.

(b) *Benefits paid below resource benefit level.* If, by the end of a plan year in which benefits were suspended under § 4281.41, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level that were unpaid shall be distributed to each affected participant and beneficiary on a pro rata basis to the extent possible, taking into account the plan's total available resources in that year.

#### § 4281.43 Notices of insolvency and annual updates.

(a) *Requirement of notices of insolvency.* A plan sponsor that determines that the plan is, or is expected to be, insolvent for a plan year shall issue notices of insolvency to the PBGC and to plan participants and beneficiaries. Once notices of insolvency have been issued to the PBGC and to plan participants and beneficiaries, no notice of insolvency needs to be issued for subsequent insolvency years. Notices shall

be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(b) *Requirement of annual updates.* A plan sponsor that has issued notices of insolvency to the PBGC and to plan participants and beneficiaries shall thereafter issue annual updates to the PBGC and participants and beneficiaries for each plan year beginning after the plan year for which the notice of insolvency was issued. However, the plan sponsor need not issue an annual update to plan participants and beneficiaries who are issued notices of insolvency benefit level in accordance with § 4281.45 for the same insolvency year. A plan sponsor that, after issuing annual updates for a plan year, determines under § 4041A.25(b) that the plan is or may be insolvent for that plan year need not issue revised annual updates. Annual updates shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.44.

(c) *Notices of insolvency—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after the plan sponsor determines that the plan is or may be insolvent. However, the notice to plan participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made after the determination of insolvency.

(d) *Annual updates—when delivered.* Except as provided in the next sentence, the plan sponsor shall mail or otherwise deliver annual updates no later than 60 days before the beginning of the plan year for which the annual update is issued. A plan sponsor that determines under § 4041A.25(b) that the plan is or may be insolvent for a plan year and that has not at that time issued annual updates for that year, shall mail or otherwise deliver the annual updates by the later of 60 days before the beginning of the plan year or 30 days after the date of the plan sponsor's determination under § 4041A.25(b).

(e) *Notices of insolvency—method of delivery.* The notices of insolvency shall be delivered by mail or by hand to the

PBGC and to plan participants and beneficiaries in pay status when the notice is required to be delivered. Notice to participants and beneficiaries not in pay status shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(f) *Annual updates—method of delivery.* Each annual update shall be delivered by mail or by hand to the PBGC. Each annual update to plan participants and beneficiaries shall be provided in any manner reasonably calculated to reach participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites and publishing the notice in a union newsletter of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

**§ 4281.44 Contents of notices of insolvency and annual updates.**

(a) *Notice of insolvency to the PBGC.* A notice of insolvency required under § 4281.43(a) to be filed with the PBGC shall contain the following information:

- (1) The name of the plan.
- (2) The name, address, and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.
- (3) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the plan sponsor and the three-digit Plan Number (PN) assigned by the plan sponsor to the plan, and, if different, the EIN or PN last filed with the PBGC. If no EIN or PN has been assigned, the notice shall so state.
- (4) The IRS Key District that has jurisdiction over determination letters with respect to the plan.
- (5) The case number assigned by the PBGC to the filing of the plan's notice

of termination pursuant to part 4041A, subparts A and B, of this chapter.

(6) The plan year for which the plan sponsor has determined that the plan is or may be insolvent.

(7) A copy of the plan document currently in effect, *i.e.*, a copy of the last restatement of the plan and all subsequent amendments. However, if a copy of the plan document was submitted to the PBGC with a previous filing, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan document was filed.

(8) A copy of the most recent actuarial valuation for the plan (*i.e.*, the most recent report submitted to the plan in connection with a valuation of plan assets and liabilities, which shall be performed in accordance with subpart B of this part). If the actuarial valuation was previously submitted to the PBGC, it may be omitted, and the notice shall state the date on which the document was filed and that the information is still accurate and complete.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefits guaranteed by the PBGC for the insolvency year.

(12) A statement indicating whether the notice of insolvency is the result of an insolvency determination under § 4041A.25 (a) or (b).

(13) A certification, signed by the plan sponsor or its duly authorized representative, that notices of insolvency have been given to all plan participants and beneficiaries in accordance with this part.

(b) *Notice of insolvency to participants and beneficiaries.* A notice of insolvency required under § 4281.43(a) to be issued to plan participants and beneficiaries shall contain the following information:

- (1) The name of the plan.
- (2) A statement of the plan year for which the plan sponsor has determined that the plan is or may be insolvent.



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(3) A statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by the PBGC.

(4) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

(c) *Annual update to the PBGC.* Each annual update required by § 4281.43(b) to be filed with the PBGC shall contain the following information:

(1) The case number assigned by the PBGC to the filing of the plan's notice of termination pursuant to part 4041A, subparts A and B, of this chapter.

(2) A copy of the annual update to plan participants and beneficiaries, as described in paragraph (d) of this section, for the plan year.

(3) A statement indicating whether the annual update is the result of an insolvency determination under § 4041A.25(a) or (b).

(4) A certification, signed by the plan sponsor or a duly authorized representative, that the annual update has been given to all plan participants and beneficiaries in accordance with this part.

(d) *Annual updates to participants and beneficiaries.* Each annual update required by § 4281.43(b) to be issued to plan participants and beneficiaries shall contain the following information:

(1) The name of the plan.

(2) The date the notice of insolvency was issued and the insolvency year identified in the notice.

(3) The plan year to which the annual update pertains and the plan sponsor's determination whether the plan may be insolvent in that year.

(4) If the plan may be insolvent for the plan year, a statement that benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended during the insolvency year, with a brief explanation of which benefits are guaranteed by the PBGC.

(5) If the plan will not be insolvent for the plan year, a statement that full

nonforfeitable benefits under the plan will be paid.

(6) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

### § 4281.45 Notices of insolvency benefit level.

(a) *Requirement of notices.* For each insolvency year, the plan sponsor shall issue a notice of insolvency benefit level to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 4281.46.

(b) *When delivered.* The plan sponsor shall mail or otherwise deliver the notices of insolvency benefit level no later than 60 days before the beginning of the insolvency year. A plan sponsor that determines under § 4041A.25(b) that the plan is or may be insolvent for a plan year shall mail or otherwise deliver the notices of insolvency benefit level by the later of 60 days before the beginning of the insolvency year or 60 days after the date of the plan sponsor's determination under § 4041A.25(b).

(c) *Method of delivery.* The notices of insolvency benefit level shall be delivered by mail or by hand to the PBGC and to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year.

### § 4281.46 Contents of notices of insolvency benefit level.

(a) *Notice to the PBGC.* A notice of insolvency benefit level required by § 4281.45(a) to be filed with the PBGC shall contain the information specified in § 4281.44(a)(1) through (a)(5) and (a)(7) through (a)(11) and:

(1) The insolvency year for which the notice is being filed.

(2) The amount of financial assistance, if any, requested from the PBGC. (When financial assistance is requested, the plan sponsor shall submit an application in accordance with § 4281.47.)

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(3) A statement indicating whether the notice of insolvency benefit level is the result of an insolvency determination under § 4041A.25(a) or (b).

(4) A certification, signed by the plan sponsor or its duly authorized representative, that a notice of insolvency benefit level has been sent to all plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year, in accordance with this part.

(b) *Notice to participants in or entering pay status.* A notice of insolvency benefit level required by § 4281.45(a) to be delivered to plan participants and beneficiaries in pay status or reasonably expected to enter pay status during the insolvency year for which the notice is given, shall contain the following information:

(1) The name of the plan.

(2) The insolvency year for which the notice is being sent.

(3) The monthly benefit that the participant or beneficiary may expect to receive during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but not below the level guaranteed by the PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than the participant's full nonforfeitable benefit under the plan.

(5) The amount of the participant's or beneficiary's monthly nonforfeitable benefit under the plan.

(6) The amount of the participant's or beneficiary's monthly benefit that is guaranteed by the PBGC.

(7) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits.

### § 4281.47 Application for financial assistance.

(a) *General.* If the plan sponsor determines that the plan's resource benefit level for an insolvency year is below the level of benefits guaranteed by PBGC or that the plan will be unable to pay guaranteed benefits when due for any month during the year, the plan sponsor shall apply to the PBGC

for financial assistance pursuant to section 4261 of ERISA. The application shall be filed within the time prescribed in paragraph (b) of this section. When the resource benefit level is below the guarantee level, the application shall contain the information set forth in paragraph (c) of this section. When the plan is unable to pay guaranteed benefits for any month, the application shall contain the information set forth in paragraph (d) of this section.

(b) *When to apply.* When the plan sponsor determines a resource benefit level that is less than guaranteed benefits, it shall apply for financial assistance at the same time that it submits its notice of insolvency benefit level pursuant to § 4281.45. When the plan sponsor determines an inability to pay guaranteed benefits for any month, it shall apply for financial assistance within 15 days after making that determination.

(c) *Contents of application—resource benefit level below level of guaranteed benefits.* A plan sponsor applying for financial assistance because the plan's resource benefit level is below the level of guaranteed benefits shall file an application that includes the information specified in § 4281.44 (a)(1) through (a)(5) and:

(1) The insolvency year for which the application is being filed.

(2) A participant data schedule showing each participant and beneficiary in pay status or reasonably expected to enter pay status during the year for which financial assistance is requested, listing for each—

(i) Name;

(ii) Sex;

(iii) Date of birth;

(iv) Credited service;

(v) Vested accrued monthly benefit;

(vi) Monthly benefit guaranteed by PBGC;

(vii) Benefit commencement date; and

(viii) Type of benefit.

(d) *Contents of application—unable to pay guaranteed benefits for any month.* A plan sponsor applying for financial assistance because the plan is unable to pay guaranteed benefits for any month shall file an application that includes the data described in § 4281.44 (a)(1)

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through (a)(5), the month for which financial assistance is requested, and the plan's available resources and guaranteed benefits payable in that month. The participant data schedule described in paragraph (c)(2) of this section shall be submitted upon the request of the PBGC.

(e) *Additional information.* The PBGC may request any additional information that it needs to calculate or verify the amount of financial assistance necessary as part of the conditions of granting financial assistance pursuant to section 4261 of ERISA.